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REPLY TO Grand Rapids

March 9, 1993
RECEIVED

Ms. Donna Searcy
Secretary
Federal Communications Commission
Room 200
1919 M Street, N.W.
Washington, D.C. 20554

MAR 10 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FEDERAL EXPRESS

MM Docket 92-266

Dear Ms. Searcy:

We are special counsel on cable matters for the City of Alpena, Michigan and file these comments in the above referenced docket on its behalf. The City of Alpena is one of a modest number of communities in the country which is currently regulating cable TV rates under the provisions of the 1984 Act and applicable Commission regulations.

Regulatory Gap: I wish to bring the following transitional issue to your attention on behalf of the City of Alpena due to its currently regulating rates under the 1984 Cable Act. This issue affects those other communities in the nation (probably representing something on the order of 3% or 4% of all subscribers) which also regulate cable rates under the 1984 Cable Act.

Briefly, I suggest that under the power granted the Commission under the 1992 Act to "prevent evasions" that the Commission's April 1 rate regulation order freeze the rates being charged in municipalities which currently regulate rates under the 1984 Act for at least 90 days after the regulations adopted by the Commission on April 1 become effective. The level of service being provided should be frozen as well (unless the municipality and

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cable operator agree to a change and corresponding change in rates). Such a transitional provision is required to prevent a claim of a "regulatory gap" in communities which currently regulate rates and which desire to continue to do so under the rules to be adopted April 1.

In this regard, the 1992 Act specifies that Section 623 of the Act (pertaining to rate regulation) is amended effective on or about April 3. However, after allowing for publication requirements and the time necessary for municipalities to become informed and take the necessary steps (internally and with the FCC) to be certified, municipalities would not be in a position to regulate rates until May at the earliest. This could be much later if the cable operators' recommendation for a discovery and trial type process to challenge a municipality's certification (authority to regulate rates, adequacy of staffing, and the like) is accepted by the Commission.

This timing potentially creates a "regulatory gap" between April 3 and when a community currently regulating cable rates could regulate under the 1992 Act. It was not Congress' intent in imposing much broader cable rate regulation to create a "gap" in regulation for communities that regulated rates under the old law. Such a gap would not only be antithetical to the Act but conducive to evasions.

Communities such as Alpena which currently regulate rates are highly likely to meet the certification requirements of the new Act and presumably are desirous to continue rate regulation. We therefore suggest that under its rate regulation authority and authority to prevent evasions that the Commission in its April 1 rulemaking adopt transitional provisions as indicated above. This will prevent any "regulatory gap" and will allow adequate time for communities which currently regulate cable TV rates to promptly become certified to regulate under the 1992 Act.

New Rates/Phase-In: Communities such as Alpena were not subject to effective competition under the 1984 Act. The rates currently in place in it and similar communities already are set based upon a principal goal of the 1992 Act--mimicking what the rates would be if there were real competition (or alternatively stated, removing monopoly profits). Such previously regulated rates should be respected and the rates not allowed to rise to any new benchmark rate if the benchmark is higher than the current regulated rate.

Alternatively, I understand that in its notice of proposed rulemaking the Commission suggested that some sort of phase-in or phase-up period may be appropriate if the rates allowed under the

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Commission's new rules are higher than those currently in effect. During the phase-in the rates apparently might slowly rise to the level allowed under the new rules.

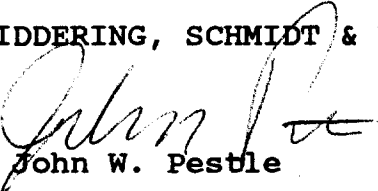
The Commission should be careful to state that any such phase-in applies to communities such as Alpena if the prior regulated rate is lower than the new benchmark rate. To this end I respectfully suggest that any references in the new rules to the rates previously charged by a cable operator should refer to rates previously charged "or the lawful regulated rate in communities which in fact regulated rates prior to the effective date of these rules."

The transitional provisions outlined above are important for all communities (such as Alpena) which currently regulate cable TV rates.

With best wishes,

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT



John W. Pestle

JWP/kel

cc: Mr. Keith Wallace, Esq.
City of Alpena file
Chron file